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The Hon John Mansfield AM QC
Independent Review of the *Return to Work Act 2014*
GPO Box 464
Adelaide SA 5001

via email: RTWreview@sa.gov.au

RE: Independent Review of the *Return to Work Act 2014*

Dear Mr Mansfield AM QC

I refer to our meeting on 31 January 2018 regarding the Independent Review of the *Return to Work Act 2014* (the Act).

Section 203(2)(b) of the Act requires that the review must include an assessment of whether the jurisdiction of the South Australian Employment Tribunal (SAET) under the Act should be transferred to the South Australian Civil and Administrative Tribunal (SACAT).

SACAT commenced operations on 29 March 2015 to help people resolve issues in a range of civil and administrative law disputes.

Since its inception, the Government has planned to expand the jurisdiction of SACAT in stages.

Stage 1 comprised the work of the former Guardianship Board, Residential Tenancies Tribunal and the Housing Appeal Panel, along with a number of appeals previously dealt with by the District Court. This jurisdiction as conferred in the *Statutes Amendment (SACAT) Act 2014*. Some of those jurisdictions were conferred after SACAT commenced.

Stage 2 comprised another small group of jurisdiction which relate to topics not previously the subject of legislation and in respect of which no equivalent review jurisdiction existed.

SACAT is currently in stage 3 of the expansion. This stage involves the conferral of jurisdiction under the *Statutes Amendment (SACAT No 2) Act 2017*. This Act will confer review jurisdiction under some 41 Acts of Parliament or Regulations.

The first group of jurisdiction under 10 pieces of legislation under the SACAT No 2 Act commenced on 14 December 2017. The second group of eight Acts will commence on 22 February 2018. It is SACAT's intention to recommend to the Attorney-General that he recommend to Cabinet that the remainder of the SACAT No 2 Act will commence later in 2018.

Stage 4 comprises existing jurisdictions under some 37 further Acts, and stage 5 will involve some further 10 Acts.

SACAT has also been conferred additional jurisdiction that had not initially been planned for in the five-staged approach. This will include review jurisdiction under the *Children and Young People (Safety) Act 2017* and the *Dog and Cat Management Act 1995*.

The conferral of jurisdiction on SACAT in stages allows for the expansion to occur in an orderly way. It allows SACAT to confer with relevant stakeholders and appropriately train staff and members. It also affords SACAT the opportunity to more accurately forecast the cost associated with each stage.

SACAT remains supportive of the expansion of our jurisdiction as planned in the staged approach and with the types of jurisdiction that have been identified as appropriate.

Accordingly, it is SACAT's view that any jurisdiction from the SAET, if it is to be conferred on SACAT, is done so at an appropriate time, and after SACAT's own jurisdiction is fully formed.

Special consideration might need to be given at that time to locating the South Australian Employment Court jurisdiction in an appropriate Court to avoid any potential constitutional issue. To date government expectation has been that SACAT remains a tribunal and not a court avoiding the conferral of the characteristics of a Chapter III Court.

SACAT has been successful in keeping costs of participation very low. This has been achieved with a low, flat fee structure and the fact that parties usually represent themselves and legal costs are rarely awarded. If SACAT were to assume the jurisdiction under the *Return to Work Act*, it would be important for SACAT to strive to maintain that approach.

However, without conferring jurisdiction relating to workers compensation matters on SACAT, consideration could be given to several measures that could enhance public accessibility to the respective tribunals; provide for greater efficiency in terms of back office functions and facilities and allow for a cross-vesting of jurisdiction in specific matters.

These measures include:

- Co-location of both tribunals which would enhance the ease of use by the public and encourage more efficient use of facilities (hearing rooms; provision of security; common staff and member areas).
- The possible sharing of resources without co-location. Often hearing and conference rooms are not fully utilised or there are peak demands which would benefit by having access to additional hearing room facilities.
- The possibility of sharing a common digital case management system and other e-services. By using one system, the existing IT staff resources could be shared and greater resources might be available to fund system enhancements. Reporting of performance could become

standard. A common platform would also enhance user experience as regular users would become more familiar with the forms and processes.

- Legislative change allowing a matter to be referred to SAET or vice versa where appropriate. The Equal Opportunity jurisdiction would benefit from this cross-vesting to make the best use of the various expertise of the Members of both tribunals (e.g. employment and administrative review).
- Collaboration in projects directed at enhancing those characteristics of tribunals that dictate their success, including alternative dispute resolution processes, reporting and accessibility.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'J. Hughes'.

Justice Judy Hughes
President
South Australian Civil and Administrative Tribunal